

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	Case No. 16-39654
	)	(Jointly Administered)
ARGON CREDIT, LLC, <i>et al</i> ,)	
	)	Chapter 7
Debtors.)	
	)	Hon. Deborah L. Thorne
)	
	)	Hearing Date: May 18, 2023 at 9:30 a.m.
)	

NOTICE OF MOTION

TO: See attached list

PLEASE TAKE NOTICE that on May 18, 2023 at 9:30 a.m., the undersigned shall appear before the Honorable Deborah L. Thorne, or whomever may be sitting in her place and stead, **either** in courtroom 682 of the Everett McKinley Dirksen United States Courthouse, 219 S. Dearborn Street, Chicago, IL 60604, **or** electronically as described below, and will then present the *Second and Final Fee Application of Freeborn & Peters LLP as Special Counsel to the Trustee*. Parties-in-interest may obtain a copy of the application by contacting undersigned counsel.

All parties in interest, including the movant, may appear for the presentment of the application either in person or electronically using Zoom for Government.

You may appear electronically by video or by telephone.

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and password.

Meeting ID and password. The meeting ID for this hearing is 160 9362 1728. The meeting ID can also be found on the judge's page on the court's web site.

If you object to this application and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the application will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the application in advance without a hearing.

Dated: April 27, 2023

**KAREN R. GOODMAN, CHAPTER 7
TRUSTEE**

By: /s/ Shelly A. DeRousse
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IN RE:) Case No. 16-39654
) (Jointly Administered)
ARGON CREDIT, LLC, *et al*,)
) Chapter 7
Debtors.)
) Hon. Deborah L. Thorne
)
) Hearing Date: May 18, 2023 at 9:30 a.m.
)

CERTIFICATE OF SERVICE

I, Shelly A. DeRousse, an attorney, hereby certify that on April 27, 2023, I caused a true and correct copy of the foregoing *Notice of Motion* and *Second and Final Fee Application of Freeborn & Peters LLP as Special Counsel to the Trustee*, to be filed with the Court and served upon the following parties by the manners listed.

_____/s/ Shelly A. DeRousse

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Lakeshore Law Center

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Yorba Linda, CA 92886-4058

William Harris

302 West Blackburn

Paris, IL 61944-1037

Wolfe, Raviv

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Valparaiso, IN 46385-9106

Woodworth, Allison J

516 W Melrose St Apt 306

Chicago, IL 60657-3787

Yodlee

Lockbox Dept CH 17505

Palatine, IL 60055-7405

Zumski, Gary

4204 E. Frontage Rd

Rolling Meadows, IL 60008-2520

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Bank of America

PO box 982234

El Paso TX 79948-2234

DIRECTV LLC

Attn: Bankruptcies

POB 6550

Greenwood Village CO 80155-6550

Jefferson Capital System

16 Mclelland Rd

Saint Cloud MN 56303

Macy's Card

PO Box 8113

Mason OH 45040

(d)Macy's Department Stores

PO Box 8218

Mason OH 45040

Portfolio Recovery

120 Corporate Blvd

Ste 100

Norfolk VA 23502

(d)Portfolio Recovery Associates LLC

POB 41067

Norfolk VA 23541-1067

TransUnion

555 West Adams Street

Chicago, IL 60661

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Ad Hoc Committee of Unsecured Creditors

(u)Brittney Gale Alaimo

(u)Christina Alston

(d)American Express National Bank

c/o Becket and Lee LLP

PO Box 3001

Malvern PA 19355-0701

(u)Michael P. Bailey

(u)Anitra Aytman Billops

(u)John K. Brigoli

(u)Stephen Craig Brown

(u)Alejandro Camacho

(u)Joseph Canfora

(u)Matthew Cantor

Page 13 of 34

(u)Dennis C. Cantrell

(u)Tiffany N. Comfort

(u)Patti M. Couture

(u)Dale & Gensburg, P.C.

(u)Shelly A. DeRousse

(u)Donald Dotson

(u)Dennis B. Estrada-Jimenez

(u)FactorLaw

(u)Pete Ferro

(u)Lindsay Fore

(u)John Fontaine

(u)Fund Recovery Services, LLC

(u)Gensburg Calandriello & Kanter, P.C.

(u)Rosemary Gonzalez-Lopez

(d)Karen R Goodman ESQ
Crane, Simon, Clar & Goodman
135 South LaSalle Street
Suite 3950
Chicago, IL 60603-4127

(u)Sonja Hallmon

(u)Karensa Hutchens

(u)April D. Johnson

(u)Joseph Martinez
3746 Morning Glory Ave.
AK 99534-8000

(u)Kim L. King

(u)Latonya D. Kitchen

(u)Kutchins, Robbins & Diamond, Ltd.

(u)Little Owl Argon, LLC

(u)Theresa Madrigal

(u)Margon LLC

(u)Margon LLC, Mark Triffler, Pete Ferro and

(u)Mark Triffler Declaration of Trust

(u)Yolanda J. McKinney

(u)Jerardo Prado

(u)Steven Prescott

(u)Joseph N. Roberson

(u)Delilah Jasso Rodriguez

(u)Eric Shorter

(u)Dean Sipe

(u)Jennifer J. Solorio

(u)Felicia M. Spiller

(u)Sugar Felsenthal Grais & Hammer, LLP

(u)Sharon S. Tatumausbie

(u)The Cardinal Trust

(u)Mark Triffler

(u)Karen Vinson

(u)Lois West

(u)Samantha Rae Wilder

End of Label Matrix

Mailable recipients 215

Bypassed recipients 57

Total 272

Label Matrix for local noticing
0752-1
Case 16-39655
Northern District of Illinois
Eastern Division
Wed Apr 26 13:58:18 CDT 2023

Argon Credit, LLC
200 W Jackson St Suite 900
Chicago, IL 60606-6986

Argon X LLC
200 W. Jackson Blvd.
Suite 900
Chicago, IL 60606-6986

Cardinal Trust
760 Village Center Dr. Suite 200
Burr Ridge, IL 60527-4507

William J Factor
William J. Factor
105 W. Madison St.
Suite 1500
Chicago, IL 60602-4602

Fintech Financial, LLC
Attn: Mandi Vavra
101 Research Park Drive
Mission, SD 57555

(p)ARGON CREDIT
100 CANAL POINTE BLVD
SUITE 208
PRINCETON NJ 08540-7169

Fund Recovery Services, LLC
Sills Cummis & Gross, PC
Attn: V. Hamilton
600 College Road East
Princeton, NJ 08540-6636

Gary Zumski
4204 E Frontage Rd
Rolling Meadows, IL 60008-2520

Matthew T. Gensburg
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Chicago, IL 60606-5251

Karen R Goodman ESQ
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135 South LaSalle Street
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E. Philip Groben
Gensburg Calandriello & Kanter, P.C.
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Chicago, IL 60606-5251

Patrick S Layng
Office of the U.S. Trustee, Region 11
219 S Dearborn St
Room 873
Chicago, IL 60604-2027

Little Owl
322 E. Michigan St. Suite 302
Milwaukee, WI 53202-5005

Sara E Lorber
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Suite 1500
Chicago, IL 60602-4602

Margon
760 Village Center Dr. Suite 200
Burr Ridge, IL 60527-4507

Mark Trifflet Trust
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Lemont, IL 60439-7746

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Chicago, IL 60604-2027

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Chicago, IL 60602-4602

Lars A Peterson
Illinois Attorney General's Office
100 W. Randolph St.
Office 13-219
Chicago, IL 60601-3218

Princeton Alternative Fund
100 Canal Point Blvd Suite 208
Princeton, NJ 08540-7169

Princeton Alternative Fund (PAF)
100 Canal Pointe Blvd. Suite 208
Princeton, NJ 08540-7169

Princeton Alternative Income Fund, LP
c/o Sills Cummis & Gross, PC
Attn: V. Hamilton
600 College Road East
Princeton, NJ 08540-6636

Raviv Wolfe
571 Vernon Wood Dr
Valparaiso, IN 46385-9106

Peter J Roberts
Cozen O'Connor
123 North Wacker Drive
Suite 1800
Chicago, IL 60606-1770

Michael J. Small
Foley & Lardner LLP
321 N. Clark Street
Suite 3000
Chicago, IL 60654-4762

Fund Recovery Services LLC

100 Canal Point Blvd Ste 208

Princeton, NJ 08540

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Fund Recovery Services, LLC

(u)Little Owl Argon, LLC

End of Label Matrix	
Mailable recipients	25
Bypassed recipients	2
Total	27

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	)	Case No. 16-39654
	)	(Jointly Administered)
ARGON CREDIT, LLC, <i>et al</i> ,)	
	)	Chapter 7
Debtors.)	
	)	Hon. Deborah L. Thorne
)	
	)	Hearing Date: May 18, 2023 at 9:30 a.m.

**COVER SHEET FOR SECOND AND FINAL FEE APPLICATION OF
FREEBORN & PETERS LLP AS SPECIAL COUNSEL TO THE TRUSTEE**

Name of Applicant: Freeborn & Peters LLP

Authorized to Provide Professional Services to: Karen R. Goodman, as chapter 7 trustee

Date of retention: July 11, 2017 *nunc pro tunc* to June 1, 2017

Period for which compensation and reimbursement is sought: June 1, 2017 through March 31, 2023

Amount of hourly compensation sought as actual, reasonable and necessary: \$239,768.00

Amount of contingency fee compensation sought as actual, reasonable and necessary: \$229,363.30

Amount of reimbursement sought as actual, reasonable and necessary: \$2,698.17

This is an ____ interim X final application

Prior Fee Applications Filed by Applicant: Yes

Hourly Fees & Expenses				
Date Filed	Period Covered	Total Requested (Fees & Expenses)	Total Allowed (Fees & Expenses)	Fees & Expenses Previously Paid
9/17/2019	6/1/2017-8/31/2019	\$133,030.59	\$133,030.59	\$133,027.59

Contingency Fees				
Date Filed	ECF No.	Total Requested Fees	Total Allowed Fees	Fees Previously Paid
11/8/2018	355	\$7,713.30	\$7,713.30	\$7,713.30
12/14/2018	373	\$1,650.00	\$1,650.00	\$1,650.00
2/1/2019	400	\$300.00	\$300.00	\$300.00
2/27/2019	405	\$6,500.00	\$6,500.00	\$6,500.00
3/19/2019	407	\$1,500.00	\$1,500.00	\$1,500.00
3/27/2019	411	\$6,800.00	\$6,800.00	\$6,800.00
4/24/2019	418	\$1,400.00	\$1,400.00	\$1,400.00
1/22/2020	472	\$17,000.00	\$17,000.00	\$17,000.00
10/20/2020	520	\$22,500.00	\$22,500.00	\$22,500.00
10/20/2020	521	\$80,000.00	\$80,000.00	\$80,000.00
2/5/2021	531	\$6,000.00	\$6,000.00	\$6,000.00
3/23/2023	578	\$78,000.00	\$78,000.00	\$78,000.00
	Totals:	\$229,363.30	\$229,363.30	\$229,363.30

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	)	Case No. 16-39654
	)	(Jointly Administered)
ARGON CREDIT, LLC, <i>et al</i> ,)	
	)	Chapter 7
Debtors.)	
	)	Hon. Deborah L. Thorne
)	
	)	Hearing Date: May 18, 2023 at 9:30 a.m.

**SECOND AND FINAL APPLICATION OF FREEBORN & PETERS LLP
AS SPECIAL COUNSEL TO THE CHAPTER 7 TRUSTEE**

Freeborn & Peters LLP (“Freeborn”) as special counsel to Karen R. Goodman (the “Trustee”), the duly appointed and serving chapter 7 trustee for the estates of Argon Credit, LLC and Argon X, LLC (collectively, the “Debtors”) submits this application (the “Application”), for entry of an order: (a) for allowance and final approval of \$239,768.00 in hourly compensation for legal services rendered by Freeborn to the Trustee for the period of June 1, 2017 through March 31, 2023 (the “Fee Application Period”), (b) for final allowance and approval of \$229,363.30 in contingency fee compensation for legal services rendered by Freeborn to the Trustee for the Fee Application Period, (c) for reimbursement of \$2,698.17 for actual and necessary expenses incurred by Freeborn during the Fee Application Period, and (d) authorizing the Trustee to pay Freeborn compensation and reimbursement of expenses in the aggregate amount of \$109,438.58, representing all unpaid amounts requested herein.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to sections 1334 and 157(a) of title 28 of the United States Code and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This is a core proceeding pursuant to section

157(b)(2) of title 28 of the United States Code. Venue is proper in this district pursuant to sections 1408 and 1409 of title 28 of the United States Code.

2. The statutory predicates for the relief requested herein are sections 330, 331, 503(b), and 507(a)(1) of title 11 of the United States Code (the “*Bankruptcy Code*”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 5082-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Illinois (the “*Local Rules*”).

BACKGROUND

A. Freeborn’s Retention by the Trustee

3. On December 16, 2016 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United State Code (the “*Bankruptcy Code*”).

4. On January 11, 2017, the Debtors’ bankruptcy cases were converted from cases under chapter 11 to cases under chapter 7.

5. Deborah K. Ebner was appointed the interim chapter 7 trustee of the Debtors’ estates, but resigned on April 17, 2017.

6. Eugene Crane was appointed as interim chapter 7 trustee on April 17, 2017 and confirmed by the Court on July 6, 2017.

7. Mr. Crane was confirmed as the duly appointed chapter 7 trustee after litigating a disputed election of another chapter 7 trustee against Fund Recovery Services, LLC (“*FRS*”), the secured lender to Argon X and unsecured creditor of Argon Credit. Freeborn represented the Trustee in connection with the disputed election.

8. On July 11, 2017, the Court entered an order authorizing the Trustee to employ Shelly A. DeRousse and Freeborn as special counsel retroactive to June 1, 2017 with respect to the following matters on the following bases:

- a. the disputed trustee election with fees to be charged on an hourly basis;
- b. analysis and pursuit of claims against the Debtors' insiders and FRS with fees to be charged on an hourly basis; and
- c. pursuit of chapter 5 causes of action with fees to be charged on a contingency fee basis (the "*Contingency Fees*").

(ECF No. 207).

9. Pursuant to the court-approved terms of Freeborn's engagement, Freeborn is entitled to a Contingency Fee of: (i) 30% of the cash value of the settlement prior to filing a lawsuit (the "*Pre-Suit Contingency Fee*") or 40% of the cash value of the settlement after filing a lawsuit (the "*Post-Suit Contingency Fee*," together with the Pre-Suite Contingency Fee, the "*Settlement Amount Contingency Fee*"), (ii) plus the cash equivalent value of any claim waiver obtained (the "*Claim Waiver Contingency Fee*").

10. On June 1, 2020, the Trustee was appointed as the successor chapter 7 trustee after Mr. Crane's resignation.

11. On July 30, 2020, the Court entered an order authorizing the Trustee to retain Ms. DeRousse and Freeborn on the same terms as previously approved with respect to Mr. Crane. (ECF No. 505). The scope of this retention included legal work performed at the request of the Trustee on an hourly basis, other than the Contingency Fee-related services.

B. Freeborn's Prior Allowance and Payment of Compensation

12. On October 9, 2019, the Court entered an order granting Freeborn's first interim fee application approving hourly fees and expenses for the period of June 1, 2017 through

August 31, 2019 totaling \$133,030.59 for which Freeborn has been paid \$133,027.59. *See* ECF No. 456.¹

13. Freeborn has previously obtained interim approval of contingency fees in connection with settlement of chapter 5 causes of action totaling \$229,363.30 for which Freeborn has been paid. *See* ECF Nos. 355, 373, 400, 405, 407, 411, 418, 472, 520, 521, 531, and 587 and Section II *infra*.

14. On April 1, 2023, Freeborn combined with the law firm Smith, Gambrell & Russell, LLP. Ms. DeRousse will continue to represent the Trustee as an attorney of Smith, Gambrell & Russell, LLP. Ms. DeRousse filed a supplemental declaration disclosing the combination and updated conflicts check on April 26, 2023.

RELIEF REQUESTED

15. This Application reflects services rendered, and expenses incurred, by Freeborn as special counsel to the Trustee from June 1, 2017 through March 31, 2023, the Fee Application Period. This request represents Freeborn's second and final request for allowance and payment of compensation and reimbursement of expenses for services rendered as special counsel to the Trustee relating to the hourly fees.

16. For the Fee Application Period, Freeborn seeks final approval of compensation in the amount of \$239,768.00 in hourly fees and reimbursable expenses in the amount of \$2,698.47, for a total of \$242,466.17. Freeborn also seeks payment of \$109,438.58, representing the unpaid balance owed for its hourly fees and reimbursable expenses.

¹ The total payment requested and authorized was \$133,050.59 in Freeborn's first interim fee application and order. However, there was a math error resulting in an overcharge of \$60.00 and a typo in the fee amount in the order (\$132,150 vs. \$132,153) resulting in an underpayment to Freeborn of \$3.00. Thus, there is a \$57.00 credit toward final fees and expenses.

17. Freeborn also requests final allowance of Contingency Fee compensation in the amount of \$229,363.30, which has previously been allowed on an interim basis. Freeborn has been paid in full on account of its Contingency Fee.

18. Freeborn has not previously sought approval of fees and expenses incurred for the period of September 1, 2019 through March 31, 2023. Freeborn's billing statements for this period, broken down by project category, are attached hereto as Group Exhibit 1.²

DISCUSSION

19. Section 330(a) of the Bankruptcy Code provides, in pertinent part, that:

[T]he court may award . . . reasonable compensation for actual, necessary services rendered by the . . . attorney and by any paraprofessional person . . . and . . . reimbursement for actual, necessary expenses. . . . In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including – (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under [the Bankruptcy Code]; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and (E) whether the compensation is reasonable, based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

20. The Seventh Circuit Court of Appeals has stated that:

The computation of hourly fees depends on the number of hours “reasonably” expended, the hourly rate of each [professional], the calculation of the time value of money (to account for delay in payment), potential increases and decreases to account for risk and the results obtained, and a complex of other considerations under the heading of “billing judgment.”

Kirchoff v. Flynn, 786 F.2d 320, 325 (7th Cir. 1986). Additionally, other courts of appeal have recognized that:

[I]t is important for the court to maintain a sense of overall proportion and not become enmeshed in meticulous analysis of every detailed facet of the

² Freeborn attaches only the billing statements for September 1, 2019 through March 31, 2023 and incorporates by reference the billing statements attached to its First Interim Fee Application.

professional representation. It is easy to speculate in retrospect that the work could have been done in less time or with fewer attorneys or with an associate rather than a partner. On the other hand, it is also possible that [the client] would not have enjoyed the success it did had its counsel managed matters differently.

Boston and Main Corp. v. Moore, 776 F.2d 2, 10 (1st Cir. 1985) (citations omitted).

21. In reviewing the Application, the Court should be guided by the Seventh Circuit's instruction to ascertain whether such services were rendered and billed in accordance with the established market for legal services in similar matters:

[I]t is not the function of judges in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he was selling his services in the market rather than being paid by court order.

In re Continental Illinois Securities Litigation, 962 F.2d 566, 568 (7th Cir. 1992); *see Mann v. McCombs (In re McCombs)*, 751 F.2d 286, 288 (8th Cir. 1984) (section 330 "is meant to encourage high standards of professional legal practice in the bankruptcy courts. . . . Bankruptcy courts must consider whether the fee awards are commensurate with fees for professional services in non-bankruptcy cases, thus providing sufficient economic incentive to practice in bankruptcy courts.")

22. In *Continental Securities*, the Seventh Circuit found error in the lower court's practice of: (a) placing ceilings on the hourly rates of all lawyers; (b) refusing to allow paralegal services to be compensated at market rate; (c) refusing to award a risk multiplier; (d) making large across-the-board cuts in research time; (e) making large across-the-board cuts in conference time; and (f) refusing to allow attorneys to bill computerized legal research services (*e.g.*, LEXIS). *Continental Illinois Securities Litigation*, 962 F.2d at 568-70.

23. In evaluating the Application, the Court should consider the novelty and difficulty of the issues presented, the skill required to perform the legal services properly, the preclusion of other employment caused by Freeborn's retention in this case, the customary fees charged in

similar cases, the existence of time limits under which the services were rendered, the results obtained, the experience and ability of the attorneys involved, and the amount of awards of compensation in similar cases. *See In re Alberto*, 121 B.R. 531, 534 (Bankr. N.D. Ill. 1990).

24. Freeborn's hourly rates of compensation for its attorneys and para-professionals during the Fee Application Period range from \$125 to \$1,125 (however, no professional with an hourly rate in excess of \$570 has performed services herein). Those rates are comparable to rates charged by other practitioners having the same amount of experience, expertise and standing for similar services in this jurisdiction. Freeborn consistently and consciously made every reasonable effort to represent the Trustee in the most economical, efficient and practical manner possible.

25. A summary of the compensation requested herein regarding each of Freeborn's professionals and para-professionals is attached hereto as Exhibit 2.

26. No agreement or understanding exists between Freeborn and any other person for the sharing of compensation received or to be received in connection with these cases, other than as disclosed or authorized pursuant to the Bankruptcy Code, Bankruptcy Rules, and the Local Rules.

27. Freeborn reserves the right to correct, amend or supplement this Application, including to seek payment in the event this Application is not approved in full.

SERVICES PERFORMED

I. Hourly Fees

28. Freeborn's hourly fee services fell into one of five categories: (1) the disputed trustee election, (2) investigation and analysis of claims against Argon Credit's insiders and FRS, (3) prosecution and settlement of the Insider Action (defined *infra*), (4) general estate services, and (5) Freeborn retention and fee application matters.

A. Trustee Election

29. The Trustee retained Freeborn to provide legal services in connection with the disputed trustee election.

30. During the Fee Application Period, Freeborn spent 57.4 hours at a cost of \$22,174.00 relating to the trustee election dispute. This category primarily includes time spent conferring with the Trustee regarding the election, drafting, researching, and successfully prosecuting an objection to the trustee election, drafting, researching and successfully prosecuting an objection to FRS' interlocutory appeal of the ruling on the Trustee election. All of this time was previously included in Freeborn's first interim fee application (ECF No. 445, Exhibit A) and, thus, none of the exhibits to this Application relate to time in this category.

B. Investigation and Analysis of Claims Against Insiders and FRS

31. The Trustee also retained Freeborn, on an hourly basis, in connection with investigation and analysis of claims against the Debtors' insiders and FRS.

32. During the Fee Application Period, Freeborn spent 198.9 hours at a cost of \$74,828.50 investigating and analyzing claims against the Debtors' insiders and FRS. All of this time was previously included in Freeborn's first interim fee application (ECF No. 445, Exhibit B) and, thus, none of the exhibits to this Application relate to time in this category.

33. This category primarily includes time spent: (i) issuing Rule 2004 discovery to the Debtors' insiders and parties-in-interest, (ii) reviewing documents produced in response to Rule 2004 subpoenas, (iii) preparing a demand letter to the Debtors' directors' and officers' liability insurance carrier, (iv) communicating and negotiating with FRS regarding its motion to quash the Trustee's Rule 2004 subpoena, (v) gaining access to and reviewing the Debtors' books and records to investigate potential insider claims, (vi) preparing motions to extend time to object to FRS' claim and tolling agreements to bring claims against FRS and attending related case status

hearings, and (vii) preparing a complaint against the Debtors' insiders for, among other things, breach of fiduciary duty and avoidance and recovery of fraudulent transfers and preferential transfers.

34. In particular, Freeborn spent a substantial amount of time investigating the basis for the complaint brought in *Crane v. Wolfe, et al.*, Adv. No. 18-00948 (the "*Insider Action*"), which was filed against thirteen (13) individuals and four (4) businesses. Among other things, the Trustee asserted claims against certain individual insiders for breaches of fiduciary duties of care and loyalty, aiding and abetting breaches of fiduciary duties, and avoidance of preferential and fraudulent transfers.³

C. Insider Action

35. Subsequent to the filing of the Insider Action, Freeborn began billing Insider hourly fees toward a separate matter number solely to track time spent with regard to post-filing tasks.

36. During the Fee Application Period, Freeborn spent 322.9 hours at a cost of \$120,745.00 relating to litigation against the Debtors' insiders. Of this time, 94.8 hours at a cost of \$35,090.50⁴ were included in Freeborn's first interim fee application (ECF No. 445, Exhibit C) while 228.1 hours at a cost of \$85,654.50 are included in the exhibits to this Application.

37. Time spent in this category includes time spent preparing the complaint in the Insider Action, attending status hearings on the complaint, communicating with various defendants regarding the claims raised in the Insider Action and their alleged defenses thereto. A

³ To the extent the Trustee brought avoidance actions against non-insider defendants in the Insider Action, Freeborn has billed those fees separately as it relates to Contingency Fee services.

⁴ The actual amount in the first interim fee application was \$35,150.50, but there was a math error resulting in a \$60 overcharge. That overcharge has been applied as a credit toward the final payment requested in this Application.

substantial amount of time spent in this category relates to preparing and exchanging position statements with the insider defendants, numerous settlement discussions, negotiations, and a semi-global settlement conference, and preparing settlement agreements and motions to approve those settlements.

38. In total, Freeborn reached settlements with insider defendants in the Insider Action totaling \$573,000.00, summarized as follows:

Settling Party/Parties	Settlement Amount
Margon LLC, <i>et al.</i> ⁵	\$191,000.00
Raviv Wolfe	\$125,000.00
Gary Zumski	\$75,000.00
Bruce Breitweiser	\$12,500.00
Byron Faermark	\$12,500.00
John Kuhlman	\$60,000.00
Harry Madanyan	\$10,000.00
Eric Schnosenberg	\$45,000.00
Barry Kostiner	\$35,000.00
Sean Tomaszkievicz/Blue Treble	\$7,000.00
Totals:	\$573,000.00

D. General Estate Services

39. During the Fee Application Period, Freeborn spent 41.4 hours at a cost of \$16,441.50 on general estate matters specifically requested by the Trustee. Time in this category primarily includes time spent reviewing, analyzing, and resolving the amount of FRS' claim; reviewing pleadings filed in ancillary litigation impacting the Debtors' estates and communication with the Trustee regarding the same; responding to a third-party subpoena on behalf of the Trustee; preparing and filing a motion to abandon the estates' loan portfolio;

⁵ The settlement with Margon, LLC, *et al.* was a semi-global settlement with certain Insider Action defendants and their affiliated entities which were defendants in the in a chapter 5 cause of action. For this settlement, the parties agreed to allocate the \$371,000 in cash settlement proceeds as \$191,000 to the Insider Action and \$180,000 to the chapter 5 cause of action.

preparing and filing an objection to the Internal Revenue Service's proof of claim; and other estate matters requested by the Trustee.

40. All time in this category is including in the billing statements is included in Group Exhibit A.

E. Freeborn Retention and Fee Applications

41. During the Fee Application Period, Freeborn spent 14.2 hours at a cost of \$5,579.00 relating to Freeborn's retention and fee application matters. Time in this category primarily includes time spent preparing and filing Freeborn's first interim fee application, and preparing this Application.

II. Contingency Fees

42. During the Fee Application Period, Freeborn represented the Trustee in pursuing certain chapter 5 causes of action on a Contingency Fee. This claims which were settled prior to filing a complaint and claims which were settled subsequent to filing a complaint.

43. Freeborn's services generally fell into one of three categories: (1) preference claims against recipients of 90-day transfers, including a preference claim against FRS; (2) a fraudulent transfer claim asserted against Broadmark Capital, LLC in the Insider Action; and (3) an action filed against several Argon Credit's members for recharacterization of purported loans to Argon Credit, which the Trustee asserted were actual equity investments, and avoidance and recovery of pre-petition payments made to the members which the Trustee asserted were wrongful distributions (the "*Recharacterization Adversary*"). The Defendants in the Recharacterization Adversary were Margon LLC, Mark Triffler as trustee of Mark Triffler Declaration of Trust Dated December 5, 1991, Barry Edmonson as trustee of The Cardinal Trust, and Little Owl Argon, LLC.

44. While the Insider Action primarily involved breach of fiduciary duty claims and related claims against Argon Credit's former insiders (*i.e.* hourly fee services), the claims asserted against Broadmark were chapter 5 claims which are encompassed within the Contingency Fee services. Where Freeborn performed services relating exclusively to Broadmark, Freeborn did not bill its time hourly but attributed it to the Contingency Fee.

45. Freeborn often appeared at court hearings and performed services which related to both the Insider Action and the Recharacterization Action. In those instances, Freeborn split its time equally between the Insider Action, on an hourly basis, and the Recharacterization Action, on a contingency fee basis. Similarly, the Trustee reached a semi-global settlement with certain Insider Action defendants and their affiliated entities which were defendants in the Recharacterization Action. For this settlement, the parties agreed to allocate the \$371,000 in cash settlement proceeds as \$191,000 to the Insider Action and \$180,000 to the Recharacterization Action.

46. In total, Freeborn reached Contingency Fee settlements totaling \$581,061.00 for which it received interim approval of Contingency Fees totaling \$229,363.30 summarized as follows:

Settling Party/Parties	Settlement Amount	Contingency Fee Owed	Interim Approval ECF No.
American Express National Bank	\$16,500.00	\$4,950.00	355
Downtune Solutions, Inc.	\$8,811.00	\$2,643.30	355
Amazon.com Services, Inc. and Amazon Web Services, Inc.	\$400.00	\$120.00	355
AutoPal Software, LLC	\$4,500.00	\$1,350.00	373
Gateway Catalyst THC, LLC	\$1,000.00	\$300.00	373
BankDirect Capital Finance, LLC	\$1,000.00	\$300.00	400
Ytel, Inc.	\$1,200.00	\$480.00	405

Settling Party/Parties	Settlement Amount	Contingency Fee Owed	Interim Approval ECF No.
CyberRidge, LLC	\$3,400.00	\$1,020.00	405
LendingTree, LLC	\$12,500.00	\$5,000.00	405
Robert Half International Inc.	\$3,750.00	\$1,500.00	407
Discover Financial Services	\$17,000.00	\$6,800.00	411
Effovex Solutions, LLC	\$3,500.00	\$1,400.00	418
Broadmark Capital, LLC	\$42,500.00	\$17,000.00	472
Fund Recovery Services, LLC	\$75,000.00	\$22,500.00	520
Margon LLC, et al. ⁶	\$180,000.00	\$80,000.00	521
Collection Acquisitions Company, Inc. d/b/a Payliance	\$15,000.00	\$6,000.00	531
Little Owl Argon, LLC	\$195,000.00	\$78,000.00	578
Totals:	\$581,061.00	\$229,363.30	

47. Freeborn has received payment in full on account of the Contingency Fees approved by the Court on an interim basis.

I. Freeborn's Reimbursable Expenses Incurred

48. Freeborn seeks final approval of reimbursable expenses in the amount of \$2,698.17. Of these expenses, \$877.59 were included in Freeborn's first interim fee application (ECF No. 445, Exhibit D) while \$1,820.58 are included in the exhibits to this Application. Freeborn incurred expenses during the Fee Application Period in the following categories:

(a) Teleconferencing Expenses: Freeborn incurred expenses in the amount of \$53.75 for teleconferencing fees. Freeborn conducts certain meetings by telephone, rather than in person, due to the number of people on the telephone conference, and the geographic location of the certain persons and the high cost and inconvenience associated with in-person meetings.

⁶ The Contingency Fee was calculated based on \$200,000 of settlement value - \$180,000 in cash and an asserted administrative expense claim of \$20,000.

Freeborn uses an outside teleconferencing provider in order to efficiently conduct teleconferences.

(b) Photocopying: Freeborn incurred copying and printing charges in the amount of \$42.00 relating to service of a demand letter upon the Debtors' directors' and officers' liability insurance carrier and the named officers and directors.

(c) Postage: Freeborn incurred postage charges of \$1,179.55 for service of various pleadings in these cases including Rule 9019 settlement motions and Freeborn's first interim fee application.

(d) Meal & Transportation Expenses: Freeborn incurred \$59.24 in fees for meals and transportation relating to a settlements conference between the Trustee and several defendants in the Insider Action and the Recharacterization Adversary.

(e) Miscellaneous Expenses: Freeborn incurred additional miscellaneous expenses such as fees for service of Rule 2004 subpoenas, FedEx charges, appearance fees, requests for copies of state court pleadings, database charges, and fees for local messenger service in the amount of \$1,363.63.

49. All expenses incurred by Freeborn in connection with its representation of the Trustee were ordinary and necessary expenses. These expenses were billed in the same manner as Freeborn bills non-bankruptcy clients.

50. Freeborn does not bill its clients or seek compensation in this Application for certain overhead expenses, such as local and long-distance telephone calls, secretarial services, and facsimile transmissions. Such expenses are factored into Freeborn's hourly rates. Freeborn has not included certain other charges described herein in its overhead because it has determined that it is fairer to its smaller clients who use proportionately less of these services to have these expenses billed separately.

BENEFIT TO THE ESTATES

51. During the Fee Application Period, Freeborn provided substantial assistance to the Trustee in connection with various estate matters including the disputed trustee election; investigating, analyzing, and pursuing causes of action against insiders and third parties in order to maximize the value of the Debtors' estate; and objecting to the IRS' proof of claim.

52. Freeborn's efforts have resulted in recoveries to the estate of more than \$1.1 million between recoveries from the Insider Action and the chapter 5 causes of action, as well as a reduction in claims against the estate of more than \$16.7 million as a result of voluntary claim waivers, 502(d) disallowances, and the IRS claim objection. Freeborn submits that its services have provided substantial benefits to the estates.

NOTICE

53. Twenty-one days' notice of this Application has been provided to the Debtors and their counsel, the Trustee, all other parties-in-interest that have requested pursuant to Bankruptcy Rule 2002, and all creditors identified on the Debtors' creditor mailing matrix.

WHEREFORE, Freeborn respectfully requests that the Court enter an order:

- (a) allowing Freeborn, on a final basis, \$239,768.00 in compensation representing the hourly fees for the Fee Application Period as chapter 7 administrative expenses of the Debtors' estates pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code;
- (b) allowing Freeborn, on a final basis, \$229,363.30 in Contingency Fees for the Fee Application Period as chapter 7 administrative expenses of the Debtors' estates pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code;
- (c) allowing Freeborn, on a final basis, \$2,698.17 in reimbursable expenses for the Fee Application Period as chapter 7 administrative expenses of the Debtors' estates pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code;
- (d) authorizing payment to Freeborn of \$109,438.58, representing all unpaid amounts requested herein for the Fee Application Period; and
- (e) granting such other and further relief as the Court deems just and proper.

Dated: April 27, 2023

**KAREN R. GOODMAN, CHAPTER 7
TRUSTEE**

By: /s/ Shelly A. DeRousse
One of Her Attorneys

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